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October 17, 1955

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CONCORD, N.H.

Mr. Frederick N. Clarke
Commissioner of Motor Vehicles
State House Annex
Concord, New Hampshire

Dear Mr. Clarke:

Your inquiry of October 5, 1955 relative to Paragraph 10 of your rules and regulations for school transportation raises a question upon which there is very little precedent in this state.

That portion of your regulation 10 which reads: "When taking on or discharging school children, the school bus shall be stopped on the extreme right of the highway. Wherever possible, a school bus may be stopped completely off the highway if facilities and stopping areas are available. Pupils shall never be allowed to board or leave a bus while in motion." is clearly within your regulatory power.

However, there is no doubt that once a passenger has alighted from a vehicle he becomes a pedestrian and not a passenger and ceases to be under your control which by section 19a of chapter 119, Revised Laws is limited to the regulation of "the design and operation of all school buses used for the transportation of school children when owned and operated by any school district publicly or privately owned or operated while under contract in this state."

The general law is that a school bus operator's duty is performed if his passenger alights in a place of safety but the suitability of the place where the pupil alights must depend upon the position of the bus upon the highway and upon the opportunity which the pupil has to see approaching

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traffic just prior to his descent. Gaudette v. McLaughlin, 88 N.H. 363, 372. If there is nothing to indicate that a pupil is about to precipitate himself negligently into the path of oncoming traffic and that the pupil is not obviously inattentive, or not seen by the bus driver to be negligently approaching a danger of which he is not aware failure to take further action beyond letting the pupil off at a reasonably safe place does not render a bus driver liable for injuries to a pupil struck by a passing car assuming that the bus driver has also complied with the other regulations and his other statutory duties. Gahagen v. Railroad, 70 N.H. 441; Clark v. Railroad, 87 N.H. 36.

The decision in Gaudette v. McLaughlin where the bus was so constructed that its driver had no means of direct control over the passengers and a descending passenger could obtain no adequate view of traffic over the highway, seems to indicate that if an alighting pupil does not have full opportunity to see approaching traffic and the bus driver does and has opportunity to warn the alighting pupil or take other saving action there may be liability upon a bus driver under the last clear chance doctrine.

Whether the school bus driver should assume the responsibility of directing students who have alighted to cross the highway while the bus driver is displaying flashing red lights becomes then a matter of policy as to which is the safest method to pursue. Whatever duty the bus driver may have will depend to some extent upon the age and experience and judgment of the pupil. Charbonneau v. MacRury, 84 N.H. 501. Obviously, the duty of care required toward a six year old pupil is greater than the duty required toward a fourteen year old or sixteen year old pupil who presumably has developed a greater ability to look out for himself.

With respect to that portion of your regulation number 10 which reads: "Discharged pupils who are required to cross the highways shall wait until the school bus has proceeded for a distance of at least 500 feet and be certain that there is no approaching traffic in either direction before they attempt to cross the road. Pupils shall not cross the road in front of a school bus." is an attempt of regulation of pedestrian traffic which is beyond the powers of your department. However, a wide latitude of control is exercised by school authorities over pupils to the extent that by RSA 136:47 (R.L. c. 134, s. 45) school boards are not only required to furnish suitable transportation to all handicapped children

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who are physically able to be so transported from their homes to school but may in lieu thereof board the children near the place where such instruction is to be furnished and provide transportation therefrom and by RSA 139:6, 7, 8, 9 (R.L. c. 135, ss. 6 thru 9) school districts are required to furnish transportation to certain pupils or in lieu thereof board a child near a public school and may require pupils to walk certain distances to established school bus stops thus in some measure directing the route which the children must travel. It is common for schools to exercise control over the pedestrian movement of pupils by "safety patrols" so-called. Under such circumstances I have no hesitation in stating that, in my opinion, school boards do have authority to regulate the manner in which pupils shall proceed after alighting. Whether the state board may direct the policy for all school boards to adopt so that a uniform procedure may be in force and whether such a uniform policy should be adopted in view of the foregoing which points out that the danger varies with the age of the child, the construction of the bus and the geography of the place of discharge of passenger, are matters upon which no opinion is given.

Very truly yours,

George F. Nelson
Assistant Attorney General

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cc - Austin J. McCaffrey
Commissioner of Education

Ralph V. Gould, Dir. Safety
Motor Vehicles